# Office of Chief Counsel Internal Revenue Service

## memorandum

CC:LM:MCT:CLE:PIT:POSTF-145889-01

DPLeone

date: September 7, 2001

to: Gary E. O'Shell, Team Manager

from: Associate Area Counsel (CC:LM:MCT:CLE:PIT)

subject: \_\_\_\_\_ and \_\_\_\_ (Final) Form

872 language following organizational changes

This is in response to your August 29, 2001 request for advice with respect to an extension of the statute of limitations for the tax years ended (Final Return). This memorandum should not be cited as precedent. This memorandum is subject to 10-day post review by our National Office and, therefore, is subject to modification.

### ISSUE

After the organizational changes effective on what is the proper name to be used on the Forms 872, Consent to Extend the Time to Assess Tax?

#### ANSWER

1. The proper name to be used on the Forms 872, is as follows:

formerly known as (EIN: (EIN: ),

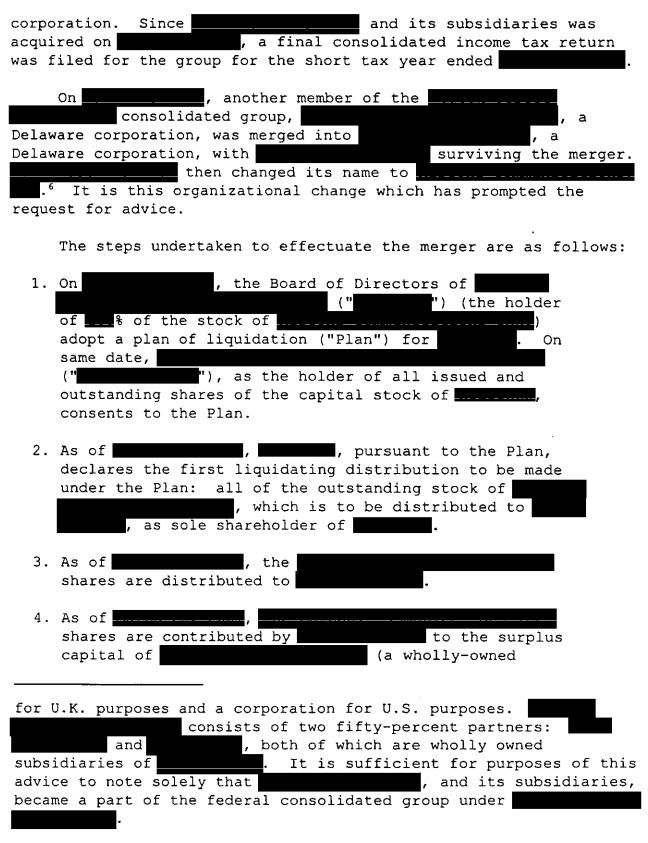
\* This is with respect to the consolidated federal income tax liability of the consolidated group for the taxable years ended , and

The common parent of the group for the tax years at issue is still in existence and is still the entity that has the authority to execute the consents to extend the statute of limitations on behalf of the consolidated group. Further, an officer of , should sign the Forms 872. I.R.C. § 6062; Rev. Rul. 83-41, 1983-1 C.B. 349.

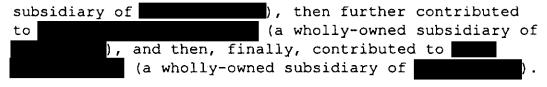
| <u>FACTS</u>   |       |
|--|-------|
| For the years ended 1, 2 and 2 and 3, 5 filed consolidated income tax returns.   |       |
| On, all of the stock of, all of the stock of, all of the stock of each of the subsidiaries listed on the affiliation schedules, was acquired by, now known as and its subsidiaries became a part of the consolidated federal group of which is the highest domestic tier | and   |
| For, the subsidiaries identified on the F<br>851, Affiliations Schedules, are as follows:<br>; ; ; ; ; ; ; and; and  | orm;  |
| For , the subsidiaries identified on the E 851, Affiliations Schedules, are as follows: ; ; ; ; ; ; ; ; ; ; ; ; ; ; ; ; ; ; ;  | Form, |
| 3 For the final return year ended , the subsidiaries identified on the Form 851, Affiliations Schedules are as follows: ; ; ; ; ; , formerly known as ; , formerly known as ; ; and ; ; and is a UK company, which changed its name to in .                              | ,     |

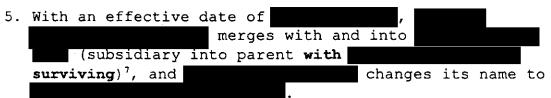
Under the check-the-box regulations, the entity is a partnership

is a domestic reverse hybrid.



<sup>6</sup> Note the addition of the comma to the corporate name.





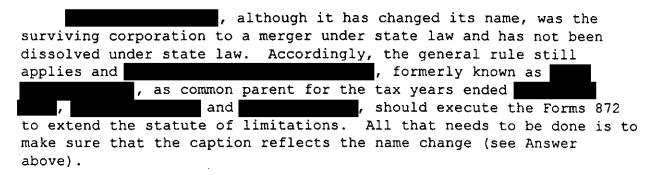
#### DISCUSSION

Under the consolidated return regulations, the common parent of a consolidated group is the sole agent for each subsidiary in the group. Treas. Reg. § 1.1502-77(a). Thus, generally, the common parent is the proper party to sign consents, including the Form 872 waiver to extend the period of limitations, for all members in the group. Treas. Reg. § 1.1502-77(a). Generally, the common parent for a particular consolidated return year remains the common parent agent for purposes of extending the period of limitations with respect to that year even though that corporation is no longer the common parent of that group when some action, such as consenting to an extension of the statute of limitations, needs to be taken for that year. Under the regulations, the common parent's authority to act as an agent for the group is determined on a year-by-year basis, so for any particular year the entity that is the common parent for that year is the sole agent for procedural matters related to that year. So long as the common parent remains in existence, even if it is no longer the common parent, it remains the agent for the group with respect to the years in which it was the common parent for the group. Southern Pacific Co. v. Commissioner, 84 T.C. 395, 401 (1985).

The general rule does not apply when the common parent is not in existence at the time such action is necessary. Treas. Reg. \$ 1.1502-77(d). The common parent is considered to have gone out of existence when it formally dissolves under state law or merges into another

Pursuant to Del. Code Ann. tit. 8, § 253 (2001), the merger of the subsidiary into the parent was effectuated by the filing of a Certificate of Ownership and Merger, in which Certificate merged into itself and assumed all of substitutions. In the same filing, name to "

corporation.



In addition to the general rule, it should be noted that Temp.

Reg. § 1.1502-77T is applicable in this case since

, formerly known as

, has ceased to be the common parent of its group, and the statutes of limitations that are to be extended are for taxable years for which the due dates (without extensions) for filing the consolidated returns are after September 7, 1988.

Under Temp. Reg. § 1.1502-77T(a)(4), there are "alternative agents" which are authorized to sign statute extensions for the group. Temp. Reg. § 1.1502-77T(a)(3). One of the permissible "alternative agents" which may sign the waiver is the common parent of the group for all or any part of the year for which the waiver applies. Temp. Reg. § 1.1502-77T(a)(4)(i). Since the permissible "alternative agent,", is a proper alternative agent, it should sign the consents with respect to the years for which it was the common parent.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views. If you have any questions, please call Donne 1. Leone at 12-644-34...

RICHARD S. BLOOM
Associate Area Counsel
(Large and Mid-Size Business)

| By: |       |      |        |        |  |
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